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IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No. 883

STATNI BANKA CESKOSLOVENSKA,

Petitioner,

—against—

EDWIN B. WOLCHOK, as Receiver of Zivnostenska Banka,

Respondent.

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK.

PETITIONER'S REPLY TO BRIEF OF THE SOLICITOR GENERAL

Petitioner submits this reply to the brief filed by the Solicitor General pursuant to the order of the Court dated April 22, 1963.

In the short time allowed us for this reply, we cannot point out the many obvious inconsistencies between the Solicitor General's present brief and the position of the United States as previously represented to the New York courts in the Suggestion of Immunity (Statni Record, pp. 51-70) and the amendatory letter from the State Department of May 12, 1960 (Zivnostenska Record, pp. 175-180). We nevertheless ask the Court for a thorough review of

these documents. We believe that, upon such review, it will be apparent that in no way have we misinformed the Court as to the action and position of the State Department with respect to the immunity of the petitioner and its property. Our statement that the Suggestion of Immunity is absolute and requests release of petitioner's property is in strict accord with the documents filed with the Court by the Department of Justice at the request of the Department of State.

Even the Government's brief concedes that the United States did suggest that petitioner is immune from this suit. The brief does not deny, and it is the fact, that the Suggestion went much further and directly advised the New York courts that such property should be "released from the attachment imposed in the pending proceedings" (Statni Record, p. 69, f. 205), since the transfers of property from Zivnostenska Bank to petitioner "constitute public acts of the State of Czechoslovakia * * *" (Statni Record, p. 55, ff. 165, 166) and the Department adheres to the rule that "immunity of the foreign sovereign from suit is recognized with regard to sovereign or public acts" (Statni Record, pp. 56, ff. 167, 168). Dismissal of the action, without release of petitioner's property, was a clear denial of effect to the absolute Suggestion of Immunity, and for all practical purposes gave petitioner no immunity at all.

The Government's brief gives no attention whatsoever to the fact that the restraining order which the Courts have refused to vacate, applies to any property which petitioner may ever bring into New York State. Because of this fact, petitioner can never safely do business in New York, the banking center of the United States, unless it waives its immunity, enters this case as defendant on the merits and eventually succeeds in vacating the restraint at least as to future assets in New York.

The Government asserts that the breadth of the restraining order presents no federal questions and is a matter for petitioner to take up with the New York Courts. If this were so, then no Suggestion of Immunity would ever present a federal question and the immunity sought in any case at the behest of the United States Government could always be denied by any State court, with no recourse to this Court. We submit that a foreign sovereign's claim of immunity for its property especially after recognition thereof by the State Department is always a federal question, is always a substantial one, and is clearly one here, where unless this Court grants relief, the petitioner (the state banking institution of Czechoslovakia) can never safely do business with any bank in the State of New York.

Respectfully submitted,

LEMUEL SKIDMORE,
Attorney for Petitioner.